

I find Covington & Burling's filing on behalf of the National Association of Realtors re opting out of junk faxes to be of concern, as it appears to suggest a single contact can establish an EBR for multiple entities, while an opt-out request might be limited to only one of those entities.

I am a licensed real estate broker in the state of California, and I find licensed real estate professionals (especially mortgage brokers) to be among the most egregious violators of the TCPA's provisions on unsolicited faxes.

Coving & Burling note that there are multiple legal entities that are somehow related in real estate operations. For example, the real estate agent is typically an independent contractor (self-employed), s/he is contracted by a real estate office, which, in turn, may be part of a national franchise.

First, the definition of what is covered by the EBR exemption should be as narrow as possible. If I provided my fax number for an agent (an independent contractor) to fax me information about a particular property, I certainly do not want faxes from every agent in an office or every office of that company in the nation. My EBR should be limited to that single agent unless I choose to make it broader.

Similarly, the opt-out provisions should exactly parallel the breadth of the EBR exemption. If, somehow, an EBR with one entity extends to any affiliated entity, then opting-out once should cover all of the entities that benefited from that EBR.

To do otherwise would create an unreasonable burden on consumers and businesses wishing to opt-out. If, somehow, multiple entities were able to share a single EBR to send junk faxes but each required a unique opt-out, a consumer (or business) could find himself or herself faced with the need to opt-out of tens (or hundreds or thousands) of junk faxers (potentially, e.g., every Coldwell Banker office and agent in the U.S.). Further, it would be difficult or impossible to know or track exactly for which entities opt-outs had been submitted.

This, it is critical that the EBR exemption for junk faxers be made as narrow as possible with respect to the covered entity and that opt-out actions cover all entities benefiting from a given EBR exemption.

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